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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 575

UNITED STATES OF AMERICA, PETITIONER

v.

ETHEL MAE YAZELL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The order of the United States District Court for the Western District of Texas (R. 75–76) is not reported. The majority and dissenting opinions of the Court of Appeals for the Fifth Circuit (R. 81–84) are reported at 334 F. 2d 454.

JURISDICTION

The judgment of the court of appeals was entered on July 13, 1964 (R. 84–85). The petition for a writ of certiorari was filed on October 8, 1964, and was granted on January 18, 1965 (R. 85). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

As consideration for a loan issued under the Small Business Act of 1953, a husband and wife jointly executed a note secured by a chattel mortgage on the merchandise in their jointly owned business. Upon default, the government sued both spouses on their personal undertakings for the outstanding deficiency. Applying the Texas law of coverture, the courts below absolved the wife of personal liability. The questions presented are:

1. Whether State or federal law is to be applied in determining the obligation of a married woman arising out of a contract executed under the Small Business Act of 1953.

2. Whether, if federal law governs, the courts should fashion a uniform rule rather than adopt the diverse rules of coverture followed in the several States.

3. Whether the uniform federal rule should be that married women may not escape their contractual undertakings by assertion of the defense of coverture.

STATUTE INVOLVED

The Small Business Act of 1953, 67 Stat. 232, as amended, 15 U.S.C. 631, *et seq.*, provides in pertinent part:

Section 631. *Declaration of Policy.*

(a) The essence of the American economic system of private enterprise is free competition. Only through full and free competition

can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

* * * * *

Section 636. *Additional powers.*

(a) *Loans to small-business concerns; restrictions and limitations.*

The Administration is empowered to make loans to enable small-business concerns to finance plant construction, conversion, or expansion, including the acquisition of land; or to finance the acquisition of equipment, facilities, machinery, supplies, or materials; or to supply such concerns with working capital to be used in the manufacture of articles, equipment, sup-

plies, or materials for war, defense, or civilian production or as may be necessary to insure a well-balanced national economy; and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) No financial assistance shall be extended pursuant to this subsection unless the financial assistance applied for is not otherwise available on reasonable terms.

* * * * *

(7) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment.

STATEMENT

The respondent, Ethel Mae Yazell, and her husband, were the recipients of a $12,000 loan issued by the Small Business Administration under the authority of the federal program promulgated by Congress for the assistance of small business (Small Business Act of 1953, 67 Stat. 232, as amended, 15 U.S.C. 631, *supra*). The Yazells executed a note in the amount of the loan, together with a chattel mortgage on the merchandise in their jointly owned business. When they defaulted, the government foreclosed on the security and instituted this action against the co-makers of the note to recover the deficiency. The district court entered summary judg-

ment against Mr. Yazell in the amount of $4,719.66 (the outstanding unliquidated portion of the loan) but, applying Texas law, upheld Mrs. Yazell's defense of coverture and dismissed the case against her (R. 75).

Upon the government's appeal (Mr. Yazell did not appeal from the adverse judgment which had been entered against him), the judgment was affirmed by a divided court. The majority (Circuit Judges Hutcheson and Jones) ruled that the Texas law of coverture controls and expressly disagreed with the Sixth Circuit's decision in *United States* v. *Helz*, 314 F. 2d 301 (holding that the defense of coverture accorded by State law is unavailable against the United States in an action brought by it under the National Housing Act to recover on a federally insured loan). Circuit Judge Prettyman (sitting by designation) dissented. Agreeing with the *Helz* rule, he stated (R. 83):

> A loan from the Federal Government is a federal matter and should be governed by federal law. There being no federal statute on the subject, the courts must fashion a rule. That is the clear holding of *Clearfield Trust Co.* v. *United States.*

Judge Prettyman was of the view that the rule should be uniform for all federal loan programs and should rest on the precept "that you must repay what you borrow" (R. 84).

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SUMMARY OF ARGUMENT

I

The question whether a married woman who has borrowed money from an agency of the United States should be held liable for its repayment is governed by federal law—and not by the law of the particular State where the contract was executed. That is an application of the settled rule that, absent a legislative declaration to the contrary, federal law determines rights and obligations arising under a nationwide program authorized by Congress. There is no basis here for subordinating the constitutional power of the national government to deal with a part of its citizens to restrictions imposed by local law.

II

This is not an instance for the federal law to adopt local law; here a uniform federal rule is necessary and proper. Deference to local laws governing the capacity of married women would complicate the administration of the small business loan program and restrict its scope. State interest in preserving the archaic rule of coverture does not outweigh the need for uniformity. The federal law should reject the principle of coverture. There is no reason to perpetuate the anachronistic restriction, especially with respect to dealings with agencies of the government which are not to be presumed to engage in overreaching.

ARGUMENT

I

FEDERAL LAW DETERMINES THE RIGHTS AND OBLIGATIONS ARISING OUT OF A CONTRACT EXECUTED WITH AN AGENCY OF THE UNITED STATES PURSUANT TO A CONSTITUTIONALLY AUTHORIZED NATIONWIDE PROGRAM

The court below held that State law determines whether a married woman is to be held accountable for the performance of a contractual undertaking owed an agency of the United States. That ruling is at war with the principle consistently enunciated in decisions of this Court that the rights of the United States under contracts entered into as part of an authorized nationwide program are to be determined by federal and not by State law.

Thus, in *Board of Commissioners* v. *United States,* 308 U.S. 343, and in *Royal Indemnity Co.* v. *United States,* 313 U.S. 289, involving the allowance of interest on obligations running to the United States or its Indian wards, it was held that the federal courts were charged with determining the appropriate measure of damages for delayed payment of the sum due according to their own criteria, unrestrained by considerations of local policy. Similarly, federal rather than State law has been applied to ascertain the liability of the maker of accommodation paper to a federal corporation insuring the holder's deposits (*D'Oench Duhme & Co.* v. *Federal Deposit Ins. Corp.,* 315 U.S. 447); to decide the extent of the obligation of the guarantor of a forged endorsement on a check drawn by the United States (*Clearfield Trust Co.* v.

United States, 318 U.S. 363); to determine whether particular machinery was the property of the United States or its private contractor (*United States* v. *Allegheny County,* 322 U.S. 174); to adjudicate a third-party tortfeasor's responsibility for damages suffered by the United States as a result of an injury inflicted upon a serviceman (*United States* v. *Standard Oil Co.,* 332 U.S. 301); to the interpretation of a lease to which an agency of the United States was a party (*United States* v. *93.970 Acres,* 360 U.S. 328); to settle the obligations of the Veterans' Administration under mortgages which it has guaranteed following default (*United States* v. *Shimer,* 367 U.S. 374); and, most recently, to fix the ownership of United States savings bonds after the death of one of the co-owners (*Free* v. *Bland,* 369 U.S. 663). Cf. *Bank of America* v. *Parnell,* 352 U.S. 29.[1] In many

[1] In *Bank of America* the Court applied State law of burden of proof in an action between private parties for conversion of government bonds. The Court recognized, however, that "[f]ederal law of course governs the interpretation of the nature of the rights and obligations created by the Government bonds themselves," emphasizing that the absence of the United States, or an agency thereof, as a party litigant did not "necessarily preclude[s] the presence of a federal interest, to be governed by federal law * * *." 352 U.S. at 34. Indeed, in suits between private litigants involving federal policies or statutes, federal law has been held to be controlling. See, *Free* v. *Bland,* 369 U.S. 663, 670; *Yiatchos* v. *Yiatchos,* 376 U.S. 306, 307; *Deitrick* v. *Greaney,* 309 U.S. 190, 200–201; *Sola Electric* v. *Jefferson Electric Co.,* 317 U.S. 173, 176; *Holmberg* v. *Armbrecht,* 327 U.S. 392, 394–395; *Dice* v. *Akron,* C. & Y. R. Co., 342 U.S. 359, 361–362; *Prudence Corp* v. *Geist,* 316 U.S. 89, 95; Moore's *Commentary on the United States Judicial Code,* pp. 309, 340 (1949).

respects the present case is an even more compelling instance for the application of federal law.

It is axiomatic that the United States has, as "an incident to [its] general right of sovereignty," the "capacity to enter into contracts" (*United States* v. *Tingey*, 5 Pet. 115, 128) and enjoys "the unrestricted power * * * to determine those with whom it will deal." *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 127. The decision below rejects that principle, holding in effect, that a State may prescribe with whom the government may contract. This is not a mere "drawing on the ready-made body of State law" (defining property concepts or family relationships) to supply content to an ambiguous term in a federal statute. Compare *De Sylva* v. *Ballentine*, 351 U.S. 570, 580–581; *Reconstruction Finance Corp.* v. *Beaver County*, 328 U.S. 204. The question here is whether the constitutional power of the national government to deal with a part of the citizenry must bow before an outmoded local rule of contractual capacity. To be sure, Congress might have deliberately subjected the federal program to the vagaries of State law. See, *e.g.*, the Federal Tort Claims Act, 28 U.S.C. 1346(b) (discussed in *Richards* v. *United States*, 369 U.S. 1) and the Social Security Act, 42 U.S.C. 416(h). But in the absence of an express Congressional declaration to that effect, no such purpose is to be implied. *United States* v. *93.970 Acres, supra*, 360 U.S. at 332–333; *Clearfield Trust Co.* v. *United States, supra*, 318 U.S. at 367. Here, there is nothing whatever to suggest a design to subordinate the national program to local restrictions.

II

IN DETERMINING THE RESPONSIBILITY OF MARRIED WOMEN FOR THEIR CONTRACTUAL OBLIGATIONS VOLUNTARILY UNDERTAKEN WITH AN AGENCY OF THE UNITED STATES THE COURT SHOULD FASHION A UNIFORM FEDERAL RULE WHICH DECLINES TO ADOPT THE DEFENSE OF COVERTURE

The determination that federal law governs does not necessarily require fashioning a uniform federal rule; it is sometimes appropriate to apply the principle of reference to local law. But that is not the usual course where a nationwide program is involved. For such a solution tends to defeat the very purpose of the Supremacy Clause—the avoidance of "disparities, confusions and conflicts" flowing from the application of varied State law rules. See *United States* v. *Allegheny County,* 322 U.S. 174, 183. At all events, here, as in *Clearfield Trust* (318 U.S. at 367), "the desirability of a uniform rule is plain."

A. THE APPLICATION OF DIVERGENT STATE RULES OF COVERTURE WOULD IMPAIR THE EFFECTUATION OF THE CONGRESSIONAL PURPOSE UNDERLYING THE ENACTMENT OF THE SMALL BUSINESS ACT OF 1953

The purpose of the Small Business Act of 1953 is to permit the government to "aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise * * *." 15 U.S.C. 631(a). To this end, the Small Business Administration is given, as this Court observed, "extraordinarily broad powers to accomplish these important objectives." *Small Business Administration* v. *McClellan,* 364 U.S. 446, 447. But its mandate is not entirely without restrictions.

On the one hand, the Act provides that "[n]o financial assistance shall be extended * * * unless the financial assistance applied for is not otherwise available on reasonable terms." 15 U.S.C. 636(a)(1).[2] Thus, the government will not be dealing with enterprises of unquestioned financial soundness. On the other hand, the Administration is cautioned that "[a]ll loans made * * * shall be of such sound value or so secured as reasonably to assure repayment." 15 U.S.C. 636(a)(7).[3] In short, undue risks must be avoided. The practical accommodation of these apparently contradictory injunctions is to ask the borrower for additional security, including meaningful personal guarantees. Accordingly, the Small Business Administration follows the practice (generally observed by government lending agencies) of requiring married women to execute personal undertakings whenever loans are made to their husbands or to a business which he, individually, or they jointly, own. But, that precaution is, of course, wasted if local exemp-

[2] See, also, 15 U.S.C. 642, requiring the applicant to "furnish the names of lending institutions to which such business enterprise has applied for loans together with dates, amounts, terms and proof of refusal." For the consistent legislative history, see S. Rep. No. 604, 84d Cong., 1st Sess. (1953), p. 11; H. Rep. No. 494, 83d Cong., 1st Sess. (1953), p. 12; and 99 Cong. Rec. 6127, 6144, 6149. The Congressional directive has been implemented by the Small Business Administrator in regulations. See 13 C.F.R. (1964 Cum. Pocket Supp.) 120.1, 122.1, 122.14 and 122.16(a).

[3] See S. Rep. No. 604, 83d Cong., 1st Sess. (1953), p. 11, H. Rep. No. 494, 83d Cong., 1st Sess. (1953), pp. 7, 12, and the remarks of Senator Capehart, floor leader of the bill, at 99 Cong. Rec. 9203.

tions in favor of married women are imported into the governing federal law.

The dimensions of the problem are substantial—even if we confine the focus to State laws bearing on the responsibility of married women. In Texas alone the Small Business Administration had almost $46 million in business loans and $15 million in disaster loans outstanding as of December 31, 1963.[4] In the eleven other States which still limit, to any significant extent, the capacity of married women to contract,[5] there were outstanding as of that date over $187 million in business and $22 million in disaster loans.[6] Moreover, the Small Business Administration is only one of many federal agencies engaged in similar lending programs. We need only cite the Federal Home Loan program which the court below thought indistinguishable. See *United States* v. *Helz*, 314 F. 2d 301 (C.A. 6). The important impact on the "government's purse" argues strongly against deferring to local rules of coverture. See *United States* v. *Standard Oil Co.*, 332 U.S. 301, 306.

Moreover, apart from impeding the collection of outstanding loans, recognition of local doctrines of coverture would restrict the practical scope of the small business assistance program for the future.

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[4] 1,363 business loans in the amount of $45,706,866; 4,172 disaster loans in the amount of $14,856,798.

[5] These States are: Alabama, Arizona, California, Florida, Georgia, Idaho, Indiana, Kentucky, Michigan, Nevada, and North Carolina. See note 10, p. 15, *infra*.

[6] There were 4,266 business loans and 2,900 disaster loans outstanding in those States representing total obligations in the amounts of $187,258,863 and $22,103,390, respectively.

Indeed, to comply with the mandate that it make loans only where repayment is reasonably assured by the furnishing of adequate security, the Small Business Administration would undoubtedly have to curtail its loans to married women in those eleven States that still retain substantial coverture restrictions. Putting to one side the considerable administrative complications in uncovering and appraising disparate State rules, a solution which discriminates against married women in certain areas would offend the objective of the national program to render financial assistance to *all* qualifying small business enterprises everywhere.

Finally, we are not here confronted with the dilemma posed by *United States* v. *Brosnan*, 363 U.S. 237, where it was observed that "the need for uniformity in this instance is outweighed by the severe dislocation to local property relationships which would result from our disregarding state procedures." 363 U.S. at 242. Coverture is a vestige of a bygone era which, today, has been rejected by the great majority of States. See *Hoyt* v. *Florida*, 368 U.S. 57, 61–62; *Bank* v. *Partee*, 99 U.S. 325, 329. At least in dealings with the national government, there is no continuing justification for disabling married women from the performance of contractual obligations. Certainly, State interest in preserving the archaic rule of coverture as against the United States falls far short of "outweighing" the considerations arguing for the adoption of a uniform federal standard.[7]

[7] The State prohibitions against married women entering into certain types of contracts stem from their status as *parens*

B. THE FEDERAL RULE SHOULD REJECT THE DEFENSE OF COVERTURE

The federal law should not perpetuate an anachronistic restriction on the rights of a married woman that has fallen into such general disfavor in the last several decades.[8] Mr. Justice Cardoza has summed up the principle that should, in our view, govern:

> * * * Social, political, and legal reforms have changed the relations between the sexes, and put women and men upon a plane of equality. Decision founded upon the assumption of a by-gone inequality were unrelated to present day realities, and ought not to prescribe the rule of life.[9]

The trend has been specifically noted by the Court on at least two occasions. As early as 1878, in *Bank* v. *Partee*, 99 U.S. 325, 331, the Court recognized that the doctrine of common-law disabilities of married women to contract has "been greatly modified in most of the States." And, quite recently, the Court noted "the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life for-

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patriae to their citizens. Though States may ordinarily assume such a status, it is the United States that stands as *parens patriae* "in respect of their relations with the Federal Government." *Massachusetts* v. *Mellon*, 262 U.S. 447, 485–486.

[8] Williston has commented that the movement away from this common-law disability has been "so far reaching that little is left of the old restrictions." 2 Williston, *Contracts*, p. 117 (3d ed., 1959). See, to the same effect, Rapacz, *Progress of the Property Law Relating to Married Women*, 11 U. Kan. City L. Rev. 173, 186.

[9] Speech quoted in Henson, *Married Woman's Contractual Rights Reviewed in Georgia*, 14 Ga. B.J. 78.

merly considered to be reserved to men." *Hoyt* v. *Florida*, 368 U.S. 57, 61–62. As we have said, there are now but eleven States that still limit a married woman's capacity to contract to any significant extent.[10] And Texas itself has recently repudiated the defense of coverture.[11]

Moreover, whatever surviving justification there may be for continuing the rule of coverture with respect to other relationships, it is difficult to discern the reasons for it in dealings between married women and agencies of the national government. Certainly, one of the dominant objectives of coverture was to protect married women—assumed to be untutored in busi-

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[10] Alabama, Florida, Indiana, Kentucky and North Carolina prohibit married women from conveying or mortgaging realty without their husband's assent. Code of Ala., Title 34, § 73; Fla. Stat. Ann. § 708.08; Ann. Ind. Stat. § 38–102; Ky. Rev. Stat. § 404.020; Gen. Stat. No. Car. § 52–2. Georgia, Idaho and Kentucky limit the ability of married women to act as sureties or guarantors for others. Ga. Code Ann. § 53.503; *Bank of Commerce* v. *Baldwin*, 14 Idaho 75, 93 Pac. 504 (1908); Ky. Rev. Stat. § 404.010. Arizona, California, Michigan and Nevada prohibit married women from making contracts binding anything other than her separate property. Ariz. Rev. Stat. § 25–214; Calif. Civ. Code § 167; Mich. Stat. Ann. §§ 26.181–26.184; Nev. Rev. Stat. § 123.170. Arizona additionally provides that the husband alone may dispose of personal property during coverture. Ariz. Rev. Stat. § 25–211(B). Within these limitations, married women may, as a rule, freely contract even in those eleven States.

[11] As of August 22, 1963, a married woman residing in Texas has the capacity to contract and be contracted with and to sue and be sued as if she were a femme sole, and, while she may not convey any part of the community property of the marriage, her separate property is available for the satisfaction of her debts. Vernon's Ann. Rev. Civ. Stat. of Tex., Arts. 4621 and 4626.

ness affairs—from the overreaching tactics of unprincipled merchants or money lenders. While, today, married women are surely less sheltered from the realities of the business world, overly persuasive salesmen still remain and some may deem it wise, for this reason, to maintain the ancient barrier. But those considerations hardly apply when the government itself is the other party. We deal here with federal programs for the assistance of the citizenry. Adoption of the rule of coverture for federal contracts, and, specifically, for the small business loans, would effectively curtail the scope of the national program by excluding from participation married women in some eleven States. There is no warrant for creating such an unnecessary discrimination.

CONCLUSION

For the foregoing reasons the judgment of the court of appeals should be reversed.

Respectfully submitted.

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